
(1998) 08 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 511 of 1997

K. Sukumarakurup

APPELLANT

Vs

Principal District Judge, Thiruvananthapuram and Others

RESPONDENT

Date of Decision : 07-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Panchayat Raj Act, 1994 — Section 34(1), 34(2), 36

Citation : AIR 1998 Ker 332 : (1999) 1 ILR (Ker) 155

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : R. Ramadas, for the Appellant; P.K. Santhamma, Govt. Pleader and M.R. Rajendran Nair, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal filed against the judgment dated 4-3-1997, raises a somewhat ticklish, but an important question of law.

2. The facts, in brief, are that to elect, a member from Ward No. 5, Alanthara Constituency in Nellanad Grama Panchayat, an election was held on 23-3-1995, which was contested by the appellant/petitioner and respondents Nos. 3 to 6. The nomination filed by the petitioner was opposed by respondent No. 3 before the Returning Officer as well as before the State Election Commission on the ground that he (petitioner) incurred disqualification, as envisaged by Section 34 (1)(g) of the Kerala Panchayat Raj Act, 1994 (for short "the Act"), inasmuch as he was interested in a subsisting contract made with the Kerala Government. It is averred that the said objection was overruled by the Returning Officer. Aggrieved, respondent No. 3 challenged the order of the Returning Officer before the State Election Commission, who affirmed the order of the Returning Officer on 29-8-1995. Thereafter, the election was held on 23-3-1995 and the result was declared on 28-9-1995. The appellant was declared elected and respondent No. 3 stood next to him.

3. Thereafter, respondent No. 3 called in question the election of the appellant by filing an election petition u/s 89(1) of the Act before the Munsiffs Court, duly notified by Government in the Gazette u/s 88 Clause (c) of the Act on the ground of improper acceptance of the nomination of the appellant, as envisaged by Section 102 Sub-section (1) Clause (d) Sub-clause (i) of the Act, reiterating the ground raised before the Returning Officer that the appellant had interest in a subsisting contract made with the Kerala Government. The designated Court accepted the contention of respondent No. 3 and declared the election of the appellant void. The appellant then appealed to the District Court u/s 113 of the Act, but without success.

4. The appellant then filed the Original Petition giving rise to the instant appeal in this Court contending that the decision of the State Election Commission confirming the order of the Returning Officer was final u/s 34(2) of the Act and no election petition could be maintained by respondent No. 3 on the purported ground of disqualification envisaged by Section 34(1)(g) of the Act. The learned single Judge held as follows :

"..... The Returning Officer has jurisdiction to decide the question of qualification or disqualification of a candidate before accepting the nomination. Similarly, once a candidate is returned, the Court constituted under the Act has got the power to go into the question and decide whether the returned candidate's election is void..... the jurisdiction of the election Court to decide the election dispute would include the question of disqualification even if the same has been decided by the Returning Officer either way at the stage of scrutiny of the nomination. In otherwords, the decision of the Returning Officer would also be subject to the decision of the election Court."

This is how the learned single Judge dismissed the original petition.

5. Before us, learned counsel for the appellant submits that the decision of the State Election Commission u/s 34(2) of the Act is final and that no election petition before the designated Court could lie on the same ground relating to a disqualification, already adjudicated upon by the State Election Commission.

6. No doubt, the State Election Commission, before whom the dispute relating to disqualification was taken by third respondent, challenging the order of the Returning Officer had held that no disqualification u/s 34(1)(a) was incurred by the appellant. The question for consideration, therefore, is whether the decision of the State Election Commission is final in this behalf.

7. By now, it is well settled that the right to challenge an election is a special right conferred under a self-contained special law and the Court will have to seek answer to the questions raised within the four corners of the Act and the powers of the Court are circumscribed by its provisions. Right to challenge an election is not a common law right. Right to vote or stand as a candidate for election is not a civil right, but is a creature of a statute or a special law and must be subject to the limitations imposed by it. It is in the light of this legal background, we have

to find out the answer of the question, posed herein. It will, therefore, be advantageous to look into the scheme of the Act. Disqualifications of candidates are enumerated u/s 34(1). Disqualifications of members are set out u/s 35. Section 34(2) runs as under: "If any question arises as to whether a candidate has become subject to any of the disqualifications mentioned in Sub-section (1), the question shall be referred for the decision of the State Election Commission and the decision of the State Election Commission on such question shall be final." 8. Section 36(1) provides that whenever a question arises as to whether a member has become disqualified u/s 30 or Section 35 after having been elected as a member, any member of the panchayat concerned or any other person entitled to vote at the election in which the member was elected, may file a petition before the State Election Commission, for decision. Sub-section (2) of Section 36 runs as under :

"The State Election Commission, after making such enquiry as it considers necessary, shall decide the petition referred to in Sub-section (1) whether or not such member has become disqualified and the decision shall be final:

9. The objection raised by the third respondent before the Returning Officer at the time of filing nomination was that the appellant was interested in a subsisting contract, made with the Kerala Government. This objection was overruled by the Returning Officer. Aggrieved, the third respondent carried the dispute to the State Election Commission, which was otherwise also mandatory u/s 34(2). The Commission affirmed the order of the Returning Officer. Sub-section (2) of Section 34 makes the decision of the Commission final. The decision of the Commission is not only final on the question of disqualification of a candidate, but the decision of the Commission, on the question whether a member has become disqualified u/s 30 or Section 35 after having been elected as a member, is, also final under Sub-section (2) of Section 36.

10. The learned single Judge held as follows:

"8..... Therefore, the decision of the Returning Officer and State Election Commission is referable only to a candidate before election and in reference to the acceptance of his nomination whereas the election Court deals with the declaration of the election of a returned candidate....."

11. The aforesaid finding of the learned Judge raises a question, whether the jurisdiction of the State Election Commission is restricted only to the disqualification of a candidate. From Section 36, it is abundantly clear that State Commission does not deal only with the disqualification of a candidate, but also with the disqualification incurred by a member, after having been elected. Therefore, it is wrong to say that that State Election Commission is concerned with the disqualification only of a candidate and not with the disqualification of a member. Moreover, this question, on the facts and in the circumstances of the case, has no relevance. It is not the case of respondent No. 3 that the appellant incurred disqualification u/s 34(1)(g) by entering into a fresh contract with

Government after having filed nomination for the first time; rather respondent No. 3 alleged at the time of filing nomination that the appellant had incurred disqualification u/s 34(1)(g) inasmuch as he was interested in a subsisting contract with the Kerala Government. The matter is to be viewed in this light. The view taken by the learned single Judge is that the decision of the State Election Commission is final on the question of disqualification of a candidate and not on the disqualification, incurred by a returned candidate on the date of his election. This question would have been significant had the third respondent pleaded that the appellant entered into a fresh contract after the nomination having been filed and thereby incurred disqualification u/s 34(1)(g) afresh. There being no allegation that the appellant incurred disqualification u/s 34(1)(g) twice -- one at the time of filing nomination and the other after the nomination having been filed and thereby, the allegation of disqualification being unified, the question for consideration is whether the decision of the State Election Commission that no disqualification u/s 34(1)(g) was incurred by the appellant would be subjected to further probe in the election petition, if any, filed before the Court u/s 89. The cardinal principle of law is that the law does not permit duplication or repetitive decisions on the the same issue by different statutory authorities at different stages. Further probe is possible only in appeal, revision or other forums by higher authorities. The question of disqualification allegedly incurred u/s 34(1)(g) having been decided by the State Election Commission, whose decision is final u/s 34(2), we are of the view that the same disqualification will not be subjected to further probe in the election petition by the Court, which is as much a creature of the statute as is the State Election Commission. The position would have been different had the 3rd respondent alleged that after nomination having been filed, appellant incurred a new disqualification, albeit u/s 34(1)(g).

In that situation, it could have been argued that there was no decision of the State Election Commission on the new disqualification, incurred after the nomination having been filed by the returned candidate. The law also abhors conflicting decisions on one and the same question by two competent authorities . If the contention of the third respondent is accepted, then the possibility of conflicting decisions by the State Election Commission on the one hand and by the designated Court on the other hand on the same disqualification could not be ruled out. The law will not contemplate such a situation and, therefore, the phrase "shall be final", appearing in Sub-section (2) of Section 34, would mean that the decision rendered by the State Election Commission on the question of disqualification, the designated Court would not be competent to re-decide the same question. When there is no change in the nature of disqualification and when no new disqualification is incurred after the nomination having been filed, we are of the view that the decision of the Commission on the question of disqualification shall be final u/s 34(2), and no election petition would lie on the same question before the designated Court -- a statutory creature. So the scheme of the Act is that when there is one and the same disqualification

before or after filing the nomination, then the decision of the State Election Commission on the question of disqualification shall be final u/s 34(2) and the Court will be precluded from probing into the same disqualification once again in the election petition.

12. In support of his point of view, the learned single Judge relied on *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, : *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and on *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and opined that on the question whether a returned candidate was disqualified, the designated Court had exclusive jurisdiction. Such conclusion is contrary to the statutory provisions and against the scheme of the Act. Let us see whether the ratio of these two authorities can be applied to the case at hand. In *Mohinder Singh Gill*, the question for consideration was whether the correctness or legality of the direction for re-poll made by the Election Commission under the Representation of the People Act, could be challenged under Article 226 of the Constitution. The Supreme Court answered the question in the negative, saying that the writ application challenging the cancellation coupled with re-poll, amounts to calling in question a step-in election and is, therefore, barred by Article 329(b) of the Constitution. The Court further observed as under (Paras 34 and 35 of AIR) :

".....Knowing the supreme significance of speedy elections, the framers of the Constitution have, by implication, postponed all election disputes to election petitions and tribunals. In harmony with this scheme, Section 100 of the Act has been designedly drafted to embrace all conceivable infirmities which may be urged. The section is exhaustive of all grievances regarding an election Article 329(b) hails judicial intervention during this period, provided the act possesses the pre-requisites of "election" in its semantic sweep."

13. So, the ratio of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, is that no election can be stalled by calling in question a step-in election and that all grievances relating to election could and should be raised in an election petition. The Court was of the view that re-poll order was also a step-in election and if that is permitted to be called in question in writ petition under Article 226, then the election which the Representation of the People Act and Article 329(b) of the Constitution required to be concluded speedily, would be stalled.

14. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , the appellant's nomination for election to the Madras Legislative Assembly was rejected by the Returning Officer and so, he hurried to the High Court praying for a writ of certiorari to quash the order of rejection without waiting for the entire elective process to run its full course and at the end of it after declaration of the result, to move to the Election Tribunal for setting aside the result of the election conducted without his participation. His Lordship Fazl Ali, J. speaking for the Court, on circumspection of the constitutional as well as

statutory provisions, enunciated as under:

"..... Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground and other grounds which may be raised under the law to call the election a in question, could be urged. I think it follows by necessary implication from the language of this provision that those ground cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal"

15. The ratio of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, is that if a nomination is rejected, then a candidate should wait till the result is declared and call in question the election of a returned candidate by way of election petition before the Election Tribunal.

16. These authorities have no bearing on the question, which is before us. Moreover, in these authorities, provisions of the Representation of the People Act, 1951 came up for consideration. There is no provision analogous to Section 34(2) of the Act, in the Representation of the People Act. It is trite that the answer of the question relating to election should be found within the four corners of the Act and if that is so, one has to confine only to the provisions of the Act and travelling over the provisions contained in the other statutes, is barred, unless the relevant statute so permits. There being no provision analogous to Section 34(2) of the Act, in the Representation of the People Act, any law laid down on the provisions of the latter Act, cannot be availed of to decide the question whether the decision of the State Election Commission on the question of disqualification is final.

17. We are, therefore, of the considered view that the decision of the State Election Commission on the question of disqualification is final and the learned Munsiff and the District Court were not competent to relook into the matter.

In the result, the appeal succeeds and is allowed. The impugned judgment dated 4-3-1997 is set aside. The appellant, who was declared elected, will continue to be a member of the Grama Panchayat till the expiry of his turn.